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DEPT. OF TRANSPORTATION
DOCKETS

Docket Management Facility
(USCG-2003-14472) - 26
(MARAD-2003-15171) - 16
U. S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington DC 20590-0001

RE: Docket No. MARAD-2003-15171 (Vessel Documentation: Lease Financing For Vessels Engaged In The Coastwise Trade; Second Rulemaking)

Dear Docket Officer:

The American Shipbuilding Association (ASA) is the national trade association that represents the six major shipbuilders in the United States and more than 30 companies engaged in the manufacture of ship systems and components. The six shipbuilders build all of the capital ships for the Navy, as well as large, commercial ocean-going Jones Act vessels. ASA fervently supports the fundamental principle that the core integrity of all aspects of the Jones Act must be preserved. This is why ASA is alarmed that the final rule and the proposed changes to the final rule, which were published in the *Federal Register* on February 4, 2004, fail to consider or address the potentially adverse effect that the final rule and proposed changes will have on the shipbuilding industrial base of the United States. Significantly, shipbuilders represent an integral sector that the Jones Act was originally enacted to preserve and protect for national economic and security purposes. In this regard, the Maritime Administration (MARAD) acknowledges in its proposed changes that Cabotage Laws ***"play a key role in preserving domestic capacity for shipbuilding and repair."*** Just as each leg of a three legged stool is essential for the functional integrity of the stool, so too is the shipbuilding sector, which is a strategically vital leg that supports and depends upon the Jones Act.

The above referenced final rule and proposed changes filled 22 pages in the *Federal Register.* However, except for several passing references to the shipbuilding sector, there was no substantive discussion of the impact of the final rule or proposed changes on shipbuilders. Significantly, financing not only represents the lifeblood of owners/operators, but also shipbuilders. Without the means to finance the ship construction, no ships will be constructed in the United States. That is why it is absolutely imperative that the economic impact on shipbuilders be included in all lease financing decisions, as well as the impact that the final rule and proposed changes to the

final rule will have on those companies that made investments in the construction of vessels that have been allowed to be included in the Jones Act trade. In short, preservation of the Jones Act and preservation of the integrity of long-term investments that were made in good faith and upon the reliance of prior decisions of the Coast Guard are not mutually exclusive, and should never be rationalized away with an arbitrary three-year grandfathering provision.

Just as it is imperative to preserve and protect the financial investments of all owners of Jones Act vessels, it is equally imperative to preserve the financial investments of all who relied and acted upon U. S. laws, Coast Guard interpretations and Coast Guard approvals, and who made long-term investments based upon those interpretations and approvals. For example, British Petroleum made a commitment to invest nearly **$1 billion** in the construction of U.S.-built double hull tankers with an expectation that these tankers would be permitted to be used in the domestic trade for the life of the ships, as opposed to being required to seek renewals under the proposed three-year grandfather provision. To its credit, British Petroleum invested in U. S.-built ships as opposed to the practices of other companies that have spent millions of dollars in their efforts to eliminate the U. S.-build requirement of the Jones Act. However, to summarily suggest that the proposed three-year grandfather provision will ***"allow companies to have a significant amount of time for planning and exploring other options,"*** and consequently the ***"economic impact"*** will be ***"minimal"*** trivializes an investment of nearly **$1 billion**; will serve as a disincentive for any future sales of commercial ships that could be built in U. S. shipyards and used in the Jones Act fleet; will serve the interests of those who seek the demise of the Jones Act; and may threaten the viability of the U.S. shipbuilding industrial base, which is essential for preserving the economic and national security of the United States - - the latter is consistent with ***"the basic principle of maritime law,"*** as stated in the legislative history of the 1996 amendment on lease financing to the Coast Guard Authorization Act.

The 1996 amendment on lease financing was intended to create greater financial flexibility for the construction of Jones Act vessels in U. S. shipyards. The amendment was instrumental in the decision of British Petroleum to make such investment in the construction of U. S.-built, state-of-the-art ships in order to facilitate the transport of Alaskan crude oil - - a national security asset. Furthermore, the form of financing that was used by British Petroleum exemplifies the benefits of its investments and commitment to the Jones Act, and to the U. S. economy while sustaining and preserving the essential elements of the Jones Act - - U. S. citizen owned operation, U. S. citizen crew, and U. S.-built vessels.

The ASA recognizes that extreme care must be exercised to ensure that any approved lease financing mechanism does not undermine the Jones Act. However, extreme care also must be exercised to ensure that the legitimate purpose of the lease finance law is achieved; that legitimate means of financing that have been interpreted to be consistent with the 1996 lease finance law are not unwittingly or unduly restricted; and that nothing is done that would impede legitimate investments such as those made by British Petroleum. That is also why ASA opposes the three-year grandfathering

provision. In this regard, the proposed three-year grandfathering provision will penalize British Petroleum, which acted in a manner totally consistent with the spirit and intent of all aspects of the lease finance law, and which acted in good faith on the approval actions of the Coast Guard. Furthermore, it will discourage the potential construction of additional tankers. Accordingly, ASA supports the unlimited grandfathering of any previously approved lease financing mechanism that occurred between the enactment of the 1996 lease finance law and February 4, 2004.

The ASA does not believe the use of an independent auditor to review future lease financing mechanisms is appropriate because it will simply add yet another bureaucratic layer of review that will only delay and add cost to a process that is already overly restrictive.

With respect to the certifications made by the Coast Guard and MARAD that the ***"proposed rule will not have a significant economic impact on a substantial number of small entities,"*** there is no documentation in the record that substantiates those certifications. In reality, an atrophying pall has existed over the entire shipbuilding industrial sector for the last 20 years with respect to the dearth of new construction orders of commercial, ocean-going Jones Act vessels. This has resulted in a dramatic loss of suppliers throughout the industry, and any action, such as restricting lease financing mechanisms, that could possibly curtail or restrict lease financing mechanisms for Jones Act vessels could result in a further atrophy and exit from the supplier base of suppliers that qualify as small businesses. Consequently, the implementation of the final rule and the proposed changes should be curtailed until a documented economic analysis is conducted. To do otherwise would render the certifications meaningless. Additionally, a cost benefit analysis would be consistent with MARAD's determination that the proposed rule is a ***"significant regulatory action"*** that ***"does require an assessment of potential costs and benefits"*** in accordance with the provisions of Executive Order 12866.

The ASA appreciates the deliberative efforts of the Coast Guard and MARAD to vigilantly protect all aspects of the Jones Act so that the Act will continue to serve the vital interests of the United States.

Sincerely,

Cynthia L. Brown
President

CC: OIRA (OMB)